



# The Attorney General of Texas

May 19, 1982

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An Equal Opportunity/  
Affirmative Action Employer

Honorable Charles A. Easterling  
Pasadena City Attorney  
City Hall  
Pasadena, Texas 77501

Open Records Decision No. 316

Re: Availability under the  
Open Records Act of employment  
file of police officer,  
including report of polygraph  
exam

Dear Mr. Easterling:

The city of Pasadena has been asked to release the following information:

1. The personnel employment file of a certain Pasadena police officer, and
2. The notes, records and examination records of the polygraph examination given this officer for employment.

You ask whether the city may withhold this material from public disclosure under article 6252-17a, V.T.C.S., the Open Records Act. You contend that section 19A of article 4413(29cc), V.T.C.S., brings the polygraph records within the ambit of section 3(a)(1) of the act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You also assert that the polygraph records are protected by section 3(a)(2), which excepts:

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

With respect to the remainder of the personnel file, you rely upon sections 3(a)(1), 3(a)(2), set out above, and 3(a)(17), which excepts:

the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

We first consider the polygraph records. Section 19A of article 4413(29cc) reads in pertinent part as follows:

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination;

(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Section 19A was enacted in 1981. Acts 1981, 67th Leg., ch. 768, at 2872.

We believe the city of Pasadena is a "person for whom a polygraph examination is conducted" within the meaning of paragraph (b) of section 19A. Pursuant to paragraph (d), therefore, the city may only release the polygraph records to those persons specified in paragraph (c). The requestor is not among those specified; accordingly, the city may not release the information to him.

With respect to the remainder of the personnel file, you advise that, pursuant to section 6(2) of article 6252-17a, you have furnished the requestor the name, sex, ethnicity, salary, title, and date of employment of the officer in question. The officer's home address and home telephone number, on the other hand, are excepted from disclosure under section 3(a)(17).

Your claim that other information in the officer's personnel file may be withheld is grounded in sections 3(a)(1) and 3(a)(2). As to the applicability of section 3(a)(1), we recently stated that:

information is not excepted from disclosure merely because it might embarrass individuals or governments. The test under the standard of common law privacy is whether the information reveals highly intimate or embarrassing facts, the disclosure of which would be highly objectionable to a person of ordinary sensibilities. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976).

Open Records Decision No. 294 (1981). Regarding section 3(a)(2), we observed as follows:

Section 3(a)(2) requires a showing that disclosure of particular information would constitute a 'clearly unwarranted invasion of personal privacy.' This exception prevents the disclosure of intimate details of a highly personal nature.

Open Records Decision No. 284 (1981).

Included in the officer's personnel file are questionnaires from individuals who served as character references. Although these questionnaires contain highly subjective comments pertaining to the officer, none of them appear to contain information whose disclosure would constitute a "clearly unwarranted invasion of personal privacy" under section 3(a)(2). You have not suggested that section 3(a)(11) might except such comments and accordingly, we make no determination of that issue. See Open Records Decision Nos. 269 (1981); 260 (1980).

The officer's personnel file also includes his medical history and the results of a medical and psychological examination. As we observed in Attorney General Opinion MW-381 (1981), under the terms of the new Medical Practice Act, article 4495b, V.T.C.S., enacted in 1981, "medical records generated by a physician are not generally included within the ambit of public information." See V.T.C.S. art. 4495b, §5.08. Thus, all information "generated by a physician" in this officer's file is excepted from disclosure by section 3(a)(1) of the Open Records Act, as "information deemed confidential by [statutory] law," in this case, section 5.08 of article 4495b. Medical history furnished by the officer to his employer is not, however, included within the ambit of article 4495b. Although medical history records might be excepted by a constitutional or common law right of privacy under section 3(a)(1) of the Open Records Act, none of the records at issue here are so excepted.

Likewise, psychological records and evaluations are now excepted by statute. Article 5561h, V.T.C.S., provides, in pertinent part:

Section 1. (a) 'Professional' means any person authorized to practice medicine in any state or nation, or any person licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or reasonably believed by the patient/client so to be.

(b) 'Patient/client' means any person who consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and other drug addiction.

Section 2. ....(b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b)(5) of Section 4 of this Act.

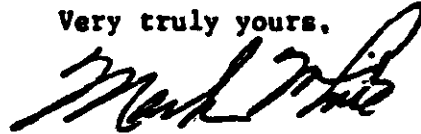
(c) Any person who receives information from confidential communications or records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf, shall not disclose

the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Thus, all information in this officer's file which is "created by" a psychologist or other mental health professional is excepted from disclosure by section 3(a)(1) as "information deemed confidential by [statutory] law," in this case, section 2(b) of article 5561h. See also V.T.C.S. art. 4413(29aa), §7A.

The remainder of the personnel file contains information which, in our opinion, may not even arguably be characterized as highly intimate or embarrassing. Consequently, it is not protected from forced disclosure by sections 3(a)(1) or 3(a)(2). You should release the information which this decision holds is not protected.

Very truly yours,



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